

**PUBLIC NOTICE  
INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION  
CITY OF SAN JOSÉ, CALIFORNIA**

***Project File Number, Description, and Location***

CP 04-079, SP 04-064, AT 04-104. Conditional Use Permit to allow the use of two existing buildings for church/religious assembly uses (with a maximum of 3,452 seats), a Special Use Permit to allow the construction of up to 14 new, industrial park condominium buildings (totaling up to 97,200 square feet), subsequent condominium map, and an off-site, alternating parking arrangement between two adjoining uses, and a Lot Line Adjustment Permit to allow the combining of three lots into one parcel for industrial park uses. (Family Community Church/RDB Development, Owners, Family Community Church / RDB Development, Developers). Council District: 2

California State Law requires the City of San José to conduct environmental review for all pending projects that require a public hearing. Environmental review examines the nature and extent of any potentially significant adverse effects on the environment that could occur if a project is approved and implemented. The Director of Planning, Building & Code Enforcement would require the preparation of an Environmental Impact Report if the review concluded that the proposed project could have a significant unavoidable effect on the environment. The California Environmental Quality Act (CEQA) requires this notice to disclose whether any listed toxic sites are present. The project location **does not** contain a listed toxic site.

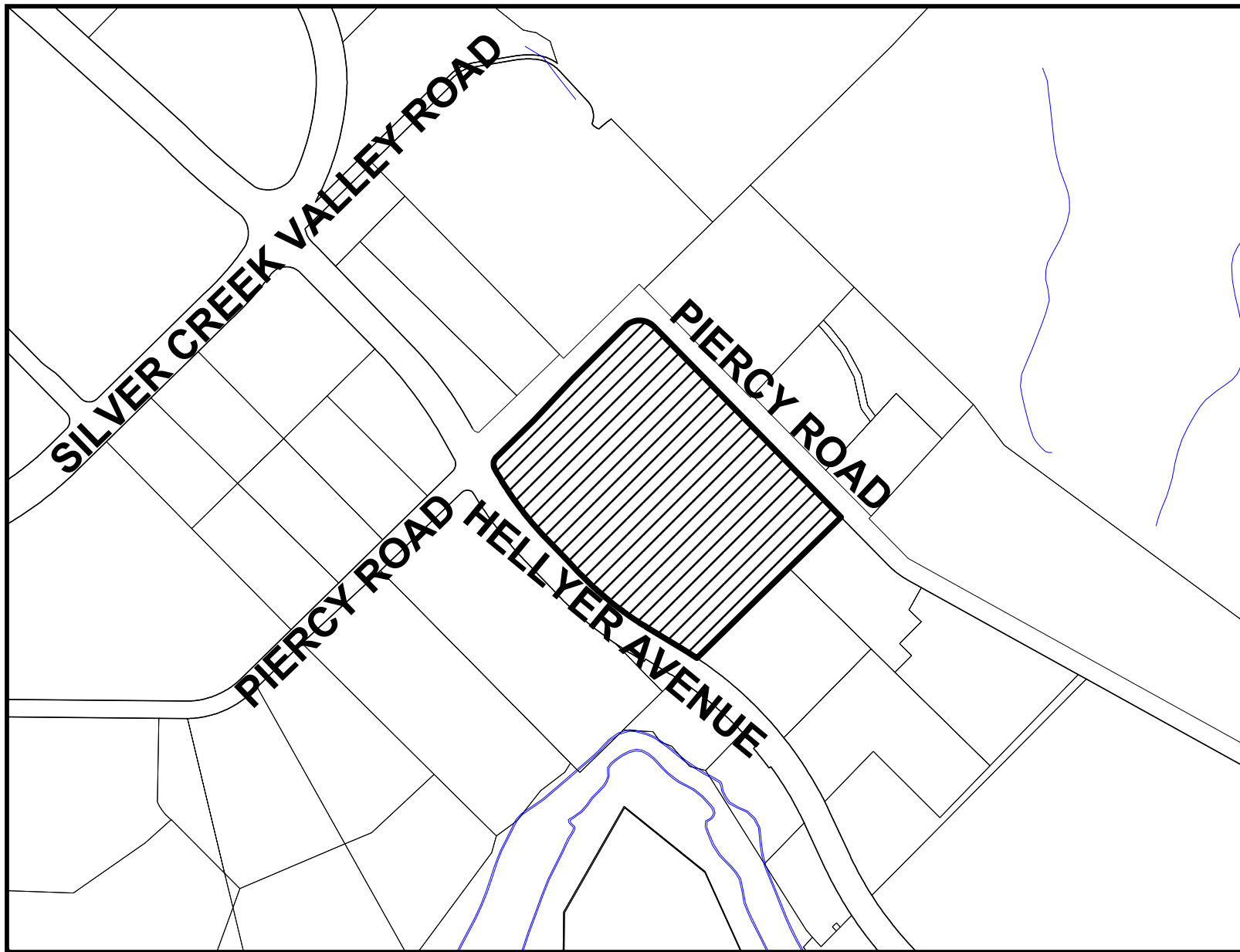
Based on an initial study, the Director has concluded that the project described above will not have a significant effect on the environment. We have sent this notice to all owners and occupants of property within 500 feet of the proposed project to inform them of the Director's intent to adopt a Mitigated Negative Declaration for the proposed project on **November 29, 2004**, and to provide an opportunity for public comments on the draft Mitigated Negative Declaration. The public review period for this draft Mitigated Negative Declaration begins on **November 10, 2004** and ends on **November 29, 2004**.

A public hearing on the project described above is tentatively scheduled for **November 29, 2004 at 6:00 p.m.** in the City of San Jose Council Chambers, 801 N. First Street, San Jose, CA 95110. The draft Mitigated Negative Declaration, initial study, and reference documents are available for review under the above file number from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San Jose Department of Planning, Building & Code Enforcement, City Hall, 801 N. First Street, Room 400, San Jose, CA 95110. The documents are also available at the Dr. Martin Luther King, Jr. Main Library, 150 E. San Fernando St, San José, CA 95112, and the Santa Teresa Branch Library, 290 International Circle, San José, CA 95119-1110 San Jose, and online at <http://www.sanjoseca.gov/planning/eir/MND2004.htm> Adoption of a Negative Declaration does not constitute approval of the proposed project. The decision to approve or deny the project described above will be made separately as required by City Ordinance. For additional information, please call **Jeff Roche** at (408) 277-4576.

Stephen M. Haase, AICP  
Director, Planning, Building and Code Enforcement

Circulated on: \_\_\_\_\_

\_\_\_\_\_  
Deputy



Scale: 1"=500'

Map Created On:  
09/03/2004

**File No: CP04-079**

**District: 02**

**Quad No: 130**

**DRAFT  
MITIGATED NEGATIVE DECLARATION**

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

**NAME OF PROJECT:** Family Community Church and Hellyer Commons

**PROJECT FILE NUMBER:** CP 04-079, SP 04-064, AT 04-104

**PROJECT DESCRIPTION:** Conditional Use Permit to allow the use of two existing buildings for church/religious assembly uses (with a maximum of 3,452 seats), a Special Use Permit to allow the construction of up to 14 new, industrial park condominium buildings (totaling up to 97,200 square feet), subsequent condominium map, and an off-site, alternating parking arrangement between two adjoining uses, and a Lot Line Adjustment Permit to allow the combining of three lots into one parcel for industrial park uses.

**PROJECT LOCATION & ASSESSORS PARCEL NO.:** Southeasterly corner of Piercy Road and Hellyer Avenue; (APNs 678-08-005, -038, -039, and -040)

**COUNCIL DISTRICT:** 2

**NAME OF APPLICANT:** Family Community Church and Equity Enterprises

**MAILING ADDRESS AND PHONE NO. OF APPLICANT CONTACT PERSON:**

Family Community Church  
20 Great Oaks Boulevard  
San Jose, CA 95119  
408-365-0313  
Attn: Gerry Mirassou

Equity Enterprises  
20 Great Oaks Boulevard, Suite 230  
San Jose, CA 95119  
408-227-2200  
Attn: Chris Beck

**FINDING**

The Director of Planning, Building & Code Enforcement finds the projects described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicants, before public release of this draft Mitigated Negative Declaration, have made or agree to make project revisions that clearly mitigate the effects to a less than significant level.

## **MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL**

### **AESTHETICS**

- Additional trees and landscaping shall be provided.
- Downward-directed lights with low pressure sodium vapor light fixtures in the parking areas shall be provided in order to prevent offsite light and glare.
- Public streets that are impacted by project construction activities shall be swept and washed down daily.
- Debris, rubbish and trash shall be cleared from any areas onsite that are visible from a public street.

### **TRAFFIC**

- The project shall contribute to Improvement District 99-218SJ (Hellyer-Piercy) for the construction of roadway and traffic improvements in the area.
- The project shall be developed in accordance with the Edenvale Area Development Policy.
- An offsite, alternating parking arrangement shall be entered into between the Family Community Church and the Hellyer Commons projects.

### **AIR QUALITY**

- The following construction practices shall be implemented during all phases of construction for the proposed project: 1) water all active construction areas at least twice daily or as often as needed to control dust emissions; 2) cover all trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard; 3) apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas during construction of the site; 4) sweep daily or as often as needed with water sweepers all paved access roads, parking areas and staging areas at construction sites to control dust; 5) sweep public streets daily, or as often as needed, with water sweepers, to keep streets free of visible soil material; 6) hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more); 7) enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) sufficient to prevent visible airborne dust; 8) limit traffic speeds on unpaved roads to 15 mph; 9) install sandbags or other erosion control measures to prevent silt runoff to public roadways; and 10) replant vegetation in disturbed areas as quickly as possible.

### **BIOLOGICAL RESOURCES**

- A pre-construction survey for burrowing owls shall be conducted by a qualified ornithologist within 30 days prior to any ground disturbance activities on the industrial park condominium portion of the site.

- A buffer zone of a minimum of 250 feet shall be established around active burrowing owl nesting sites if nesting burrowing owls are discovered during pre-construction surveys conducted between February 1st and August 31st, and no disturbance shall occur within the buffer zone until a qualified biologist has determined that the young birds have fledged; and at least 6.5 acres of foraging habitat contiguous with the occupied burrow site shall be protected for each pair of breeding burrowing owls (with or without dependent young) or single unpaired resident bird.
- No disturbance shall occur within 160 feet of occupied burrows if over-wintering burrowing owls are discovered using the site during the non-breeding season (September 1st through January 31st); and at least 6.5 acres of foraging habitat contiguous with the occupied burrow site shall be protected for each pair of burrowing owls or single unpaired resident bird.
- If any burrowing owls are discovered using the site during the pre-construction surveys during the non-breeding season, a burrowing owl relocation plan to be approved by the California Department of Fish and Game shall be developed and implemented, including passive measures such as installation of one-way doors in active burrows for up to four days, careful excavation of all active burrows after four days to ensure no owls remain underground, and filling all burrows in the construction area to prevent owls from using them.

#### CULTURAL RESOURCES

- A qualified archaeologist shall be required to monitor all subsurface grading, as follows:
  - If no resources are discovered, the archaeologist shall submit a report to the Director of Planning verifying that the required monitoring occurred and that no further mitigation is necessary.
  - If evidence of any archaeological, cultural, and/or historical deposits is found, hand excavation and/or mechanical excavation shall proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines.
  - The archaeologist shall submit reports, to the satisfaction of the Director of Planning, describing the testing program and subsequent results; these reports shall identify any program mitigation to be completed in order to mitigate archaeological impacts (including resource recovery and/or avoidance, testing and analysis, removal, reburial, and curation of archaeological resources at a recognized storage facility).
  - In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required.
  - Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:
    - In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission, who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the

disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

#### GEOLOGY AND SOILS

- A Certificate of Geologic Hazard Clearance shall be obtained from the Director of Public Works prior to any discretionary approval for all development in areas shown on the Geologic Hazards Ordinance map; and any Conditions of Clearance including, but not limited to, measures identified in the geologic evaluation, slope stabilization, surface and subsurface drainage control, offsite improvements, use restrictions, erosion control and/or maintenance guarantees for private improvements contained therein shall be implemented as specified. *A Certificate of Geologic Hazard Clearance was issued for the existing buildings on the church portion of the project site on February 20, 2001, and an updated Certificate of Geologic Hazard Clearance was issued for the industrial park condominium portion of the site on November 4, 2004.*
- All earthwork and foundation plans and specifications on the industrial park condominium portion of the project site shall comply with the recommendations of the updated geotechnical investigation and pavement design report by United Soil Engineering, Inc. The geotechnical and pavement design report lists approximately 40 recommendations that are included in the project for site grading, foundations, retaining walls, slabs-on-grade, excavation, drainage, utility trenches and pavement design, most of which reflect standard engineering practices that are not required to mitigate environmental impacts. The recommendations that specifically address potential geotechnical hazards found on the site are included below.
- Continuous perimeter foundations and isolated interior spread footings or skin friction foundations shall be utilized in any industrial condominium buildings subjected to expansive soils movement.
- Drainage shall be controlled and directed away from all structures and pavements.
- A City approved Erosion Control Plan shall be developed and implemented with such measures as: 1) the timing of grading activities during the dry months, if feasible; 2) temporary and permanent planting of exposed soil; 3) temporary check dams; 4) temporary sediment basins and traps and/or 5) temporary silt fences.

#### HAZARDS AND HAZARDOUS MATERIALS

- A Hazardous Materials Storage Permit shall be obtained from the City Fire Marshal prior to the issuance of a building permit to include 1) a monitoring system, 2) primary and secondary containment, 3) overfill protection, 4) separation of materials, 5) a drainage system, 6) a security system, 7) emergency equipment and procedures and 8) a Hazardous Materials Management Plan, if required.
- The number of exits on the opposite side of the building from the gas pipeline shall exceed the number required by the California Building Code.
- All windows shall be covered with a one-hour rated assembly located within 8 inches of the glass on the interior side of all windows of the walls facing the gas pipeline.

- All roll-up doors on the walls facing the gas pipeline shall be replaced with one-hour fire assemblies.
- All other openings on the wall facing the gas pipeline shall also be protected by a one-hour fire rated assembly.
- The buildings shall be vacated when any construction is on-going on the side of the buildings where the gas pipeline is buried.
- A Site Emergency Preparedness Plan for the building shall be prepared and submitted to the San Jose Fire Department for review and approval prior to occupancy. This plan shall describe evacuation procedures, the shelter-in-place program, and other procedures to follow in the event of an emergency.
- The project building shall be considered a shelter-in-place in the event of a chemical release incident; as such, personnel will be directed to move and stay indoors for the duration of the event, and the ventilation system will be shut down to minimize the migration of airborne hazardous chemicals to the building interior.
- The Family Community Church shall periodically review the surrounding facilities for hazard assessment purposes.

#### HYDROLOGY AND WATER QUALITY

- A Notice of Intent and a Storm Water Pollution Prevention Plan that addresses both construction and post-construction periods and specifies erosion and sediment control measures, waste disposal controls, maintenance responsibilities, and non-stormwater management controls, shall be submitted to the RWQCB and maintained onsite, respectively, to comply with the stormwater discharge requirements of the NPDES General Permit.
- The project shall comply with the pollutant control and peak flow control measures, including a combination of site design, source control, and treatment Best Management Practices (BMPs), of the SCVURPPP NPDES (MS4) Permit.
- A Storm Water Pollution Prevention Plan (SWPPP) in compliance with the local NPDES permit shall be developed and implemented including: 1) site description; 2) erosion and sediment controls; 3) waste disposal; 4) implementation of approved local plans; 5) proposed post-construction controls, including description of local post-construction erosion and sediment control requirements; 6) Best Management Practices (BMP) such as the use of infiltration of runoff onsite, first flush diversion, flow attenuation by use of open vegetated swales and natural depressions, stormwater retention or detention structures, oil/water separators, porous pavement, or a combination of these practices for both construction and post-construction period water quality impacts; and 7) non-storm water management.

#### NOISE

- Mechanical ventilation shall be provided in accordance with Uniform Building Code requirements when windows are to be closed for noise control.
- Mechanical equipment shall be selected and located, using roof screens or barrier walls as necessary, to limit offsite noise to 55 dB at residential property lines.

- Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any onsite or offsite work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific construction noise mitigation plan and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- All construction equipment, fixed or mobile, shall be in proper operating condition and fitted with standard factory silencing features; mufflers shall be used on all heavy construction equipment.

### **PUBLIC REVIEW PERIOD**

Before 5:00 p.m. on **November 29, 2004**, any person may:

- (1) Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or
- (2) Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND; or
- (3) File a formal written protest of the determination that the project would not have a significant effect on the environment. This formal protest must be filed in the Department of Planning, Building and Code Enforcement, 801 North First Street, San Jose, Room 400 and include a \$50 filing fee. The written protest should make a "fair argument" based on substantial evidence that the project will have one or more significant effects on the environment. If a valid written protest is filed with the Director of Planning, Building & Code Enforcement within the noticed public review period, the Director may (1) adopt the Mitigated Negative Declaration and set a noticed public hearing on the protest before the Planning Commission, (2) require the project applicant to prepare an environmental impact report and refund the filing fee to the protestant, or (3) require the Draft MND to be revised and undergo additional noticed public review, and refund the filing fee to the protestant.

Stephen M. Haase, AICP  
Director, Planning, Building and Code Enforcement

Circulated on: November 10, 2004

\_\_\_\_\_  
Deputy

Adopted on: \_\_\_\_\_

\_\_\_\_\_  
Deputy